

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE JOSEPH C. SPERO, MAGISTRATE JUDGE

DAVID AND NATASHA WIT, et al.,)

Plaintiffs,)

VS.)

UNITED BEHAVIORAL HEALTH,)

Defendant.)

No. C 14-2346 JCS

San Francisco, California

Tuesday, October 31, 2017

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiffs:

ZUCKERMAN SPAEDER LLP
1800 M Street, NW, Suite 1000
Washington, DC 20036-5807

**BY: CARL S. KRAVITZ, ESQUIRE
CAROLINE E. REYNOLDS, ESQUIRE
AITAN D. GOELMAN, ESQUIRE**

ZUCKERMAN SPAEDER LLP
485 Madison Avenue, 10th Floor
New York, New York 10022

BY: JASON S. COWART, ESQUIRE

(Appearances continued on next page)

Reported By: Katherine Powell Sullivan, CSR #5812, RMR, CRR
Jo Ann Bryce, CSR #3321, RMR, CRR
Official Reporters - U.S. District Court

APPEARANCES (CONTINUED) :

For Plaintiffs: ZUCKERMAN SPAEDER LLP
100 East Pratt Street, Suite 2440
Baltimore, Maryland 21202-1031

BY: ADAM ABELSON, ESQUIRE

THE MAUL FIRM, P.C.
101 Broadway, Suite 3A
Oakland, California 94607

BY: ANTHONY F. MAUL, ESQUIRE

PSYCH APPEAL
8560 Sunset Boulevard, Suite 500
West Hollywood, California 90069

BY: MEIRAM BENDAT, ESQUIRE

For Defendant: CROWELL & MORING LLP
515 South Flower Street, 40th Floor
Los Angeles, California 90071-2258

BY: JEFFREY H. RUTHERFORD, ESQUIRE
JENNIFER S. ROMANO, ESQUIRE
ANDREW HOLMER, ESQUIRE

CROWELL & MORING LLP
3 Embarcadero Center, 26th Floor
San Francisco, California 94111

BY: NATHANIEL P. BUALAT, ESQUIRE

CROWELL & MORING LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004-2595

BY: APRIL N. ROSS, ESQUIRE

I N D E X

Tuesday, October 31, 2017 - Volume 9

PLAINTIFFS' WITNESSES PAGE VOL.NIEWENHOUS, GERARD (CALLED IN REBUTTAL)

(PREVIOUSLY SWORN) 1801 9

Direct Examination by Ms. Reynolds 1801 9

Cross-Examination by Ms. Romano 1820 9

DEFENDANT'S WITNESSES PAGE VOL.GODDARD, THOMAS GLENN (RECALLED)

(PREVIOUSLY SWORN) 1782 9

Cross-Examination by Mr. Abelson 1783 9

URBAN, LORETTA

By Videotaped Deposition (not reported) 1791 9

BROCK III, IRVIN PETE

By Videotaped Deposition (not reported) 1791 9

BONFIELD, WILLIAM CLIFFORD

By Videotaped Deposition (not reported) 1792 9

E X H I B I T STRIAL EXHIBITS IDEN EVID VOL.

305 1801 9

353 1802 9

360 1810 9

519 1782 9

539 1818 9

552 1817 9

556 1817 9

651 1809 9

I N D E XE X H I B I T STRIAL EXHIBITSIDEN EVID VOL.

694

1782 9

1657 through 1661

1793 9

PROCEEDINGS

Tuesday - October 31, 2017

8:36 a.m.

P R O C E E D I N G S

---000---

THE CLERK: We're calling Case Number C 14-2346,
Wit/Alexander versus UBH. And everybody is here.

THE COURT: So what's up? Sealing matters and
motions.

MR. BUALAT: Actually, Your Honor, these were two
exhibits that were introduced during examination by UBH that we
seek to move into evidence that we didn't do at the time.

THE COURT: Okay.

MR. BUALAT: I believe --

MR. ABELSON: No objection.

MR. BUALAT: -- there's no objection.

THE COURT: What are they?

MR. BUALAT: Exhibit 519 and Exhibit 694.

THE COURT: Okay. Those are admitted.

(Trial Exhibits 519 and 694 received in evidence)

MR. BUALAT: And I think at this point we'll be
re-calling Dr. Goddard.

THE COURT: Yes.

THOMAS GLENN GODDARD,

called as a witness for the Defendant, having been previously
duly sworn, testified further as follows:

THE CLERK: Dr. Goddard, I'm just going to remind you

1 you're still under oath.

2 **THE WITNESS:** Got it.

3 **THE CLERK:** And just be sure you speak clearly into
4 the microphone for our court reporter, and there's water if you
5 need it.

6 **THE WITNESS:** Thank you.

7 **THE CLERK:** Okay. Thank you.

8 **CROSS-EXAMINATION**

9 **BY MR. ABELSON:**

10 **Q.** Good morning, Dr. Goddard.

11 **A.** Good morning.

12 **Q.** You were asked yesterday about two accreditation
13 standards, URAC's HUM 1 and NCQA's UM 2; right?

14 **A.** That's correct.

15 **Q.** URAC and NCQA have various other requirements for
16 accreditation, but those two were the only ones that relate to
17 the clinical review criteria; right?

18 **A.** Yes. Relate at least to their review, approval, and
19 adoption, yes.

20 **Q.** You testified that neither URAC nor NCQA review or
21 accredit the substantive content of clinical guidelines; right?

22 **A.** That's correct.

23 **Q.** Let's look at the URAC standard just to make sure your
24 testimony is clear on that point. We'll turn to Exhibit 1012
25 at page 154.

1 **A.** (Witness examines document.)

2 **Q.** Now, there are four subparts of this requirement, right,
3 (a), (b), (c), and (d)?

4 **A.** Yes.

5 **Q.** Now, the Court asked you about the second one, subsection
6 (b), which says "Based on current clinical principles and
7 processes," and specifically whether that subsection refers to
8 a process or a substantive criteria. Do you remember that?

9 **A.** That's right.

10 **Q.** And you explained that the requirement based on current
11 clinical principles and processes relates to a process; right?

12 **A.** That's right.

13 **Q.** So when URAC assesses a company's compliance with HUM 1,
14 including subsection (b), they do not assess the clinical
15 appropriateness of clinical standards or the guidelines
16 themselves?

17 **A.** That's correct.

18 **Q.** And the same goes for NCQA, it does not substantively
19 evaluate medical necessity criteria in deciding whether to
20 grant accreditation?

21 **A.** That's correct.

22 **Q.** And neither accreditation -- the accreditation agencies do
23 not determine whether clinical criteria are clinically sound or
24 consistent with generally accepted standards of care?

25 **A.** That's correct.

1 Q. They focus exclusively on the process by which these
2 accreditation agencies select, review, and approve criteria,
3 not on the criteria themselves?

4 A. Yes.

5 Q. And URAC and NCQA do not review the terms of benefit plans
6 in deciding whether to grant accreditation; right?

7 A. That's correct.

8 Q. And so they make no determination on whether the clinical
9 review criteria are consistent or inconsistent with the terms
10 of any health benefit plans?

11 A. That's correct.

12 Q. Now, in the course of your testimony yesterday in
13 describing the process that URAC and NCQA review, you offered
14 the opinion that UBH's criteria are, quote, "objective and
15 based on clinical evidence." And you're not offering an
16 opinion, though, on generally accepted standards of care in the
17 behavioral health field; right?

18 A. That's correct.

19 Q. You didn't conduct any analysis of the content of UBH's
20 guidelines?

21 A. That is also correct.

22 Q. That was outside of the scope of your assignment and
23 outside the scope of your expertise?

24 A. Both are true.

25 Q. So when you say that UBH's guidelines are based on

1 clinical evidence, you're using that same term in the same
2 sense as HUM standard 1, subpart (b)?

3 A. Yes.

4 Q. You reviewed UBH's Level of Care Guidelines using the same
5 process that URAC or NCQA -- a reviewer from those agencies
6 would use to determine whether the clinical criteria are based
7 on current clinical principles and processes; right?

8 A. Yes.

9 Q. So you looked to see whether there were citations in the
10 guidelines; right?

11 A. Right.

12 Q. You didn't read the sources cited by UBH in those
13 guidelines?

14 A. No.

15 Q. You didn't assess whether UBH had properly incorporated
16 the cited materials into the guidelines?

17 A. That's correct.

18 Q. You didn't examine whether the guidelines actually reflect
19 the content of the sources that you cited?

20 A. That's correct.

21 Q. You didn't do any analysis of whether the criteria in the
22 footnotes were adopted by UBH without modification?

23 A. That's correct.

24 Q. And you didn't know whether there's any relationship
25 between the citations in UBH's guidelines and the guidelines

1 themselves?

2 **A.** That is generally correct. In a couple of cases I said,
3 "All right. Let me just see what's there behind that
4 footnote," and I would go to that resource; but I didn't do any
5 substantive analysis of what I found there other than to say,
6 "Oh, this is a real resource."

7 **Q.** You offered the opinion that UBH met the requirements of
8 HUM 1 for URAC and NCQA UM 2; right?

9 **A.** UM 2 to the -- the element (a), Numbers 1, 4, and 5.
10 Numbers 2 and 3 in the NCQA standard relate to application of
11 the guidelines, and I didn't look at that at all.

12 **Q.** Okay. But in, for example, looking at UM -- HUM 1 for
13 URAC, you were looking at whether UBH's guidelines, as you
14 said, were based on current clinical principles and processes;
15 right?

16 **A.** Right.

17 **Q.** You reached that opinion by reviewing UBH's guidelines,
18 minutes from what you called the task force, and some e-mails;
19 right?

20 **A.** And a few other documents as well, yes.

21 **Q.** That was how you concluded that UBH's guidelines were
22 based on clinical principles?

23 **A.** That's right.

24 **Q.** Would it change your opinion if you knew that UBH's
25 subject matter experts for substance use disorders unanimously

1 recommended shifting to third-party guidelines by the American
2 Society of Addiction Medicine, and the only reason the company
3 did not was because executives could not be guaranteed that the
4 benefit expense would not go up? Would that change your
5 opinion?

6 **MR. BUALAT:** Objection. Assumes facts.

7 **THE COURT:** Overruled.

8 **THE WITNESS:** Could you restate the question, please?
9 I want to make sure I understand it.

10 **BY MR. ABELSON:**

11 **Q.** Sure. So you offered the opinion based on what you
12 reviewed that UBH's guidelines were based on clinical
13 principles?

14 **A.** Yes.

15 **Q.** Would it change that opinion if you knew that UBH's
16 clinical subject matter experts unanimously recommended for
17 substance use disorders that the company move to third-party
18 guidelines developed by the American Society of Addiction
19 Medicine, and that the only reason the company did not was
20 because executives could not be guaranteed that benefit expense
21 would not go up?

22 **A.** Hmm. I'm not sure about that. I'd have to see what --
23 how that showed up in the documentation and how that landed in
24 the task force discussion. It's a little more ornate an
25 assessment than the way you've presented, I think.

1 Q. So you can't say now one way or the other whether that
2 would change your opinion?

3 A. Right. Right. I'd have to sit down with the set of
4 documents that the accreditation reviewer would have in front
5 of him or her and make an assessment based on that.

6 Q. Now, the URAC accreditation requirements have two
7 sections; right? Core requirements and the health utilization
8 management requirements?

9 A. That's correct.

10 Q. And the core requirements are requirements that all --
11 that health utilization management organizations must meet as
12 well; right?

13 A. That's right. It's just as much a part of the
14 accreditation program as the UM standards themselves.

15 Q. If you could turn to Exhibit 1012 at page 60. If you can
16 bring that up.

17 A. (Witness examines document.)

18 Q. This is the URAC accreditation requirement with respect to
19 regulatory compliance?

20 A. Yes.

21 Q. The standard requires that an organization tracks
22 applicable laws and regulations, ensures the organization's
23 compliance with those laws, and that it responds promptly to
24 assess -- to correct detected problems; is that right?

25 A. Yes.

1 Q. If a URAC accredited entity misinforms a regulator, for
2 example, under this requirement, it must promptly take
3 corrective action; right?

4 A. Yes. That would be assumed from this.

5 Q. And by "assumed," you mean it is a requirement that that
6 be done?

7 A. That would be consistent with the intent of this standard,
8 yes.

9 Q. And so failure to do so would violate this --

10 A. It would violate the intent of this standard, yes.

11 Q. Well, it would violate the terms of this; right?

12 A. Right. The reason I'm cautious around this is because
13 it's not clear how that information would come to the
14 accreditation entity within the normal accreditation process.
15 It might come to the attention of the accrediting body through
16 a complaint filed to the accrediting body, but it wouldn't
17 necessarily show up in the accreditation process.

18 Q. It would be a violation of Core 4, would it not, if you
19 knew that UBH provided inaccurate information to the
20 Connecticut Department of Insurance in 2013 and again in 2015
21 and has failed to correct it to this day despite multiple
22 annual accreditation processes?

23 A. It would be -- it would be relevant to an assessment.
24 This standard goes -- is, like many of the URAC standards, is
25 an assessment of the system in place, and a single -- and

PROCEEDINGS

1 whether the system in place is consistent with this. A single
2 variance from this system wouldn't necessarily pull them out of
3 compliance with this standard if the system were, as a whole,
4 still consistent with this standard.

5 **Q.** That information would be relevant to whether UBH has
6 complied with Core 4?

7 **A.** Yes.

8 **MR. ABELSON:** No further questions.

9 **THE COURT:** Redirect?

10 **MR. BUALAT:** No, Your Honor.

11 **THE COURT:** Okay. Thank you very much.

12 **THE WITNESS:** Thank you.

13 (Witness excused.)

14 **MS. ROSS:** Your Honor, at this time UBH calls Loretta
15 Urban, who will appear by video.

16 **THE COURT:** Okay.

17 (Video was played but not reported.)

18 **MS. ROSS:** Your Honor, UBH next calls Dr. Irvin Brock.
19 Dr. Brock is a former employee who lives out of state, who will
20 also appear by video this morning.

21 **THE COURT:** Okay.

22 (Video was played but not reported.)

23 **THE COURT:** Next?

24 **MS. ROSS:** Your Honor, one more video. UBH calls
25 Dr. William Bonfield, who will also appear by video.

PROCEEDINGS

1 (Video was played but not reported.)

2 **MS. ROSS:** Your Honor, at this time for the record we
3 would like to move to admit the transcripts of the testimony
4 that has come in by video yesterday and today. Specifically we
5 have what has been marked as Exhibit 1657, which is the video
6 testimony of Dr. Robinson-Beale; Exhibit 1658, which is the
7 video testimony of John Beaty; Exhibit 1659, which is the video
8 testimony of Dr. William Bonfield; Exhibit 1660, which is the
9 video testimony of Dr. Irvin Brock; and Exhibit 1661, which is
10 the deposition -- I'm sorry -- the video testimony of Loretta
11 Urban.

12 **THE COURT:** I don't think that's how we do it. I
13 don't think these are marked as exhibits.

14 **MS. ROSS:** We spoke with Ms. Hom earlier, and that's
15 how she suggested we do it.

16 **THE COURT:** We mark them as exhibits? We mark the
17 transcripts as exhibits? We've got transcripts -- lots of
18 transcripts.

19 **MS. ROSS:** These -- I'm sorry, Your Honor. These are
20 not the full transcripts. These are specifically the clips.

21 **THE COURT:** I appreciate that, but that's just the
22 four videos you played. They played a bunch of videos too.

23 You guys work it out, and whatever it is is fine with me.
24 Meet and confer and figure out what you want.

25 **MS. ROSS:** Thank you, Your Honor.

PROCEEDINGS

1 **THE COURT:** I don't want to have it done unilaterally
2 by one side.

3 **MS. ROSS:** My understanding, Your Honor, is that the
4 plaintiffs intend to do the same thing with their videos that
5 they showed.

6 **THE COURT:** Well, okay. Just give Ms. Hom a list of
7 all the videos. They're all admitted.

8 **MS. ROSS:** Okay. Thank you, Your Honor.
9 (Trial Exhibits 1657 through 1661 received in
10 evidence)

11 **MS. ROMANO:** At this time, Your Honor, defendant UBH
12 rests its case. We do understand that plaintiffs have some
13 redirect. I'm sorry, rebuttal.

14 We have raised some objections with them already, in light
15 of some of the exhibits that have been identified to us for
16 rebuttal, as being outside the scope of UBH's case-in-chief.
17 Including an indication that they had intended to offer
18 deposition testimony of a witness that we haven't seen the
19 designations for. And it would also fall outside the scope of
20 UBH's case-in-chief.

21 **THE COURT:** Okay.

22 **MS. REYNOLDS:** Your Honor, with respect, first, to the
23 deposition testimony, we'll read it in as a foundation for a
24 question which is provided for in the Court's pretrial order.
25 It's just a short excerpt.

PROCEEDINGS

1 **THE COURT:** Okay.

2 **MS. REYNOLDS:** Introducing a document that was offered
3 in response to a 30(b)(6) deposition subpoena.

4 **THE COURT:** Okay. And with respect to documents and
5 topics, how do you want to proceed?

6 I don't understand what the objection is.

7 **MS. ROMANO:** Certainly, Your Honor. I guess I'll take
8 one at a time.

9 Back to the deposition testimony, I guess we're not sure
10 about what the process is that plaintiffs are intending to use
11 here. They haven't identified any particular deposition
12 testimony from -- I believe it's Ms. Catlin, Heather Catlin.

13 Plaintiffs have informed us that they are seeking to use
14 that, with a 30(b)(6) notice, to admit a document relating to
15 financial information which falls outside the scope of UBH's
16 case-in-chief. So it's not proper rebuttal. And, in addition,
17 we are not aware of what that deposition testimony is.

18 **THE COURT:** Okay.

19 **MS. REYNOLDS:** Okay. So with respect to the subject
20 matter, there was testimony during UBH's case concerning UBH's
21 inclusion in its standard criteria of certain definitions that
22 come from the United Healthcare template Certificate of
23 Coverage. There was also testimony denying that financial
24 considerations played any role in guideline creation.

25 And the document shows, first, the proportion of UBH's

PROCEEDINGS

1 commercial membership that's insured under United Healthcare
2 plans and the proportion of revenue derived from those plans.
3 And it also shows the proportion of UBH's revenue that's
4 derived from fully insured versus ASO plans, which is relevant
5 to the conflict issue.

6 **THE COURT:** Yeah, but it was relevant to your
7 case-in-chief. It's not rebuttal to the specific things that
8 they talked about, which was: We didn't talk about it in
9 connection with the guidelines; we didn't talk about it in
10 connection with this; we didn't talk about it in connection
11 with this.

12 That's not proper rebuttal. You cannot do that on
13 rebuttal.

14 Next.

15 **MS. ROMANO:** So then going to the other issue, Your
16 Honor, with respect to -- there were numerous exhibits that
17 were disclosed to us as being used for Mr. Niewenhous, who is
18 plaintiffs' rebuttal witness.

19 Things relating to ABA treatment and the Connecticut
20 guidelines or regulatory requirements. Again, revenue
21 information; again, items that were not new theories raised as
22 part of UBH's case-in-chief, and improper rebuttal.

23 **MS. REYNOLDS:** So a lot of those documents are not on
24 the list. It's only a short number of documents that -- we
25 used the same list as the cross-examination list, which was

PROCEEDINGS

1 keyed off of there.

2 **THE COURT:** But there's a subject matter. Tell me,
3 what are you doing in rebuttal?

4 **MS. REYNOLDS:** Sure. Okay. That's probably the
5 easiest way to go.

6 There are a couple of documents that relate to whether or
7 not UBH --

8 **THE COURT:** So are you calling a witness in rebuttal?

9 **MS. REYNOLDS:** Yes.

10 **THE COURT:** Who is the witness?

11 **MS. REYNOLDS:** The witness is Mr. Niewenhous.

12 **THE COURT:** Mr. Niewenhous. He's called live?

13 **MS. REYNOLDS:** Yes.

14 **THE COURT:** Okay.

15 **MS. REYNOLDS:** And we intend to ask him a short, small
16 number of questions. There's one small number of questions
17 related to testimony we heard today.

18 And then the first subject is in relation to the state
19 mandate. There were assertions in UBH's case about the fact
20 that UBH always uses the state-mandated guidelines. And so
21 there are a couple of documents that rebut that testimony.

22 **THE COURT:** Is that an issue, subject with which you
23 have an issue?

24 **MS. ROMANO:** As characterized like that, I don't think
25 we'd object right now, Your Honor. We'd have to see what the

PROCEEDINGS

1 question is and what it got into.

2 **THE COURT:** Okay.

3 **MS. REYNOLDS:** There are three documents that go to
4 the meaning of specific concepts that appear in the guidelines
5 on which there was testimony in UBH's direct case. One about
6 the meaning of the reasonable period of time. One about
7 readiness for change. And one about co-occurring conditions
8 provision. And then, lastly, there are documents that rebut
9 the testimony yesterday that average length of stay was
10 discussed at the BPAC only rarely or only once.

11 **THE COURT:** Do you have an issue with those?

12 **MS. ROMANO:** On the first issue, Your, Honor with
13 respect to the guideline language and different terms,
14 plaintiffs did walk through, in fact, all of the introduced and
15 showed all of the Level of Care Guidelines to Mr. Niewenhous,
16 as well as others, in their case-in-chief. Certainly, it was
17 part of their case-in-chief. And, again, we would say it's not
18 proper rebuttal testimony, subject to a specific question
19 relating to a specific item that -- that was raised or
20 presented in UBH's case-in-chief.

21 **THE COURT:** Yeah. I mean, that's my question. How do
22 these go to the specific --

23 **MS. REYNOLDS:** I mean --

24 **THE COURT:** General category, yes. But that was
25 addressed during the case-in-chief.

PROCEEDINGS

1 **MS. REYNOLDS:** Right. I mean, there was testimony --
2 so taking, first, reasonable period of time.

3 **THE COURT:** Right.

4 **MS. REYNOLDS:** If you need a specific citation, I'll
5 have to take a pause and grab that. But there was testimony
6 from UBH's witnesses about the fact that the reasonable period
7 of time is -- is determined in relation to a specific person
8 and so forth.

9 There's a document that -- in which a UBH medical director
10 states that improvement within a reasonable period of time
11 trumps the issue of deterioration.

12 **THE COURT:** "Trumps the issue of deterioration."

13 **MS. REYNOLDS:** Trumps whether or not a person will
14 deteriorate if services are withdrawn.

15 **THE COURT:** Interesting. Okay.

16 What about the co-occurring conditions?

17 **MS. REYNOLDS:** There was testimony in UBH's
18 case-in-chief that the provision on safely managing
19 co-occurring conditions includes safely treating them. And
20 there's an email exchange specifying that, no, what is intended
21 is that they are safely managed.

22 **THE COURT:** Okay. And what about the readiness for
23 treatment?

24 **MS. REYNOLDS:** So readiness for change, I believe
25 there was testimony about whether or not that could concern --

PROCEEDINGS

1 whether or not that could be the basis for a denial. And
2 there's an email on that issue. And that one I would have to
3 go back and look at the transcript to get the exact testimony
4 for you.

5 **THE COURT:** Yeah, I need to know what you're talking
6 about in terms of what you're trying to rebut to answer that
7 question.

8 **MS. REYNOLDS:** Right.

9 **THE COURT:** Do you want to get that?

10 **MS. REYNOLDS:** I don't have it right this minute so
11 I'll -- I can withdraw that one.

12 **THE COURT:** Okay.

13 **MS. REYNOLDS:** That's fine.

14 **THE COURT:** Okay. I'll allow the testimony about
15 rebuttal in a reasonable period of time, and the co-occurring
16 conditions, and ALOS, and the state guidelines.

17 **MS. REYNOLDS:** And then the last piece was there was
18 some testimony this morning. It was -- that was a little
19 unclear. We just wanted to clarify, there was a reference to
20 Best Practice Guidelines. And we just wanted to clarify what
21 those are. It's just a couple of questions.

22 **THE COURT:** I'm not quite sure what that means.

23 **MS. REYNOLDS:** That was our concern. There's a -- UBH
24 has a practice of adopting a list of Best Practice Guidelines
25 that are something that UBH does not itself develop. They're

PROCEEDINGS

1 different than the Level of Care Guidelines and different than
2 the CDGs. And we just wanted to make sure that that was clear.
3 There was some discussion about --

4 **THE COURT:** Discussion this morning about adopting
5 external national standards that would be complementary to the
6 CDGs.

7 **MS. REYNOLDS:** Right.

8 **THE COURT:** And so what are you going to ask about?

9 **MS. REYNOLDS:** Just to clarify that, that these are --
10 these are sets of guidelines that are -- that are developed by
11 professional associations, not by UBH, and that they are not
12 used as the basis for denials at UBH.

13 **THE COURT:** Okay. That sounds good.

14 All right. What time is it? How long is this testimony?

15 **MS. REYNOLDS:** I don't think this is going to take
16 very long.

17 **THE COURT:** That's not an answer.

18 All right. We're going to take ten minutes right now.

19 **MS. REYNOLDS:** Okay.

20 (Recess taken at 10:11 a.m.)

21 (Proceedings resumed at 10:23 a.m.)

22 **THE COURT:** Okay.

23 **MS. REYNOLDS:** One quick housekeeping matter before we
24 move on. In reviewing the transcript, we determined that
25 plaintiff neglected to move into evidence Exhibit 305.

NIEWENHOUS - DIRECT / REYNOLDS

1 **MR. RUTHERFORD:** No objection, Your Honor.

2 **THE COURT:** Okay. 305 is admitted.

3 (Trial Exhibit 305 received in evidence.)

4 **MS. REYNOLDS:** Plaintiffs call Mr. Gerard Niewenhous
5 in rebuttal.

6 **THE COURT:** Okay.

7 **MS. REYNOLDS:** Please don't be alarmed at the size of
8 the binders. We're not going through all of those.

9 **THE COURT:** You're still under oath. You know that?

10 **THE WITNESS:** I do.

11 **THE COURT:** Okay. Thank you.

12 **GERARD NIEWENHOUS,**

13 called as a rebuttal witness for the Plaintiffs, having been
14 previously duly sworn, testified as follows:

15 **DIRECT EXAMINATION**

16 **BY MS. REYNOLDS:**

17 **Q.** Good morning, Mr. Niewenhous.

18 **A.** Good morning.

19 **Q.** We've talked a lot during this trial about Level of Care
20 Guidelines and Coverage Determination Guidelines. I'd just
21 like to clarify one thing for the record.

22 UBH also adopts a set of what it calls "Best Practice
23 Guidelines"; right?

24 **A.** That is correct.

25 **Q.** And the Best Practice Guidelines is essentially a list of

1 guidelines that are issued by the American Psychiatric
2 Association, the American Academy of Child and Adolescent
3 Psychiatry, and other associations; right?

4 **A.** That is correct.

5 **Q.** Those are not guidelines that are developed by UBH; right?

6 **A.** That is correct.

7 **Q.** And they're not used by UBH as the basis for clinical
8 denials; right?

9 **A.** My understanding is that they're used as a basis for
10 discussion with providers about best practices.

11 **Q.** So not as a basis for clinical denials?

12 **A.** That's a bit out of my swim lane, how they are actually
13 used in the course of reviewing a case.

14 **Q.** Could you turn in your binder to Exhibit 353.

15 **A.** I'm there.

16 **Q.** Are you there?

17 This is an email string in which the last email is a
18 message from you to Jeremy Hodess and others on September 19th,
19 2012; right?

20 **A.** That is correct, yes.

21 **MS. REYNOLDS:** Your Honor, we offer Exhibit 353 into
22 evidence.

23 **MS. ROMANO:** No objection.

24 **THE COURT:** Okay. It's admitted.

25 (Trial Exhibit 353 received in evidence.)

1 BY MS. REYNOLDS:

2 Q. Let's turn, first, to the very beginning of this string,
3 which is on page 17.

4 Are you there?

5 A. I'm there.

6 Q. Okay. So the subject matter of the string is "ASAM for
7 Illinois commercial members."

8 Do you see that?

9 A. I do, yes.

10 Q. Okay. And this email -- Christa Castaneda, who is the
11 director of clinical operations in Houston; right?

12 A. For After Hours, yes.

13 Q. And Ms. Castaneda states:

14 "According to the attached document, it appears we
15 should be using ASAM Criteria for Illinois commercial
16 accounts. We have not been using ASAM in these accounts
17 in AH."

18 Do you see that?

19 A. I do.

20 Q. What is "AH"?

21 A. After Hours.

22 Q. And then let's jump ahead to the next -- it's two emails
23 after that, which is on page 16.

24 Do you see an email from Ms. Castaneda to Julie Burton?

25 A. I do.

1 Q. And Ms. Castaneda asks Ms. Burton in her email:

2 "Does your team use ASAM Criteria for Illinois
3 commercial members?"

4 Do you see that?

5 A. I do.

6 Q. All right. Let's turn to page 15. This is the email on
7 the bottom of the page. And Ms. Burton, Julie Burton, is
8 regional director of clinical operations in Saint Louis; right?

9 A. She's the region director of clinical operations. I'm not
10 sure if she's based in Saint Louis.

11 Q. Do you see on the top of page 16 where it says "Saint
12 Louis CAC"?

13 A. Oh, yes, I do. Thank you.

14 Q. That's Saint Louis Care Advocacy Center?

15 A. That's correct.

16 Q. So Ms. Burton responds to Ms. Castaneda:

17 "Actually, we don't. But apparently we," quote,
18 "'should'"; unquote.

19 Do you see that?

20 A. I do.

21 Q. Okay. Let's turn to page 13. There's an email from Judy
22 Bronson. And Judy Bronson is a clinical appeals consultant and
23 appeals team supervisor for UBH; right?

24 A. That is correct, yes.

25 Q. Okay. And in her email, Ms. Bronson is referencing the

1 question in the previous emails that we discussed; right?

2 **A.** I'm sorry, could you say your question please.

3 **Q.** Why don't I read the email. She says that:

4 "Julie Burton requested that I send this up through
5 compliance for a determination on the attached document,
6 which indicates that for certain books of business
7 (Illinois commercial is most relevant for Saint Louis, but
8 it appears this applies to other accounts as well) peer
9 reviewers should cite ASAM Criteria in denial letters for
10 substance abuse treatment. This is the first our office
11 has heard of this requirement, and I doubt our reviewers
12 have been using this as a basis for their denials. (Using
13 the CDG or LOC guidelines instead)."

14 Did I read that correctly?

15 **A.** Yes, you did.

16 **Q.** And then turn to page 12. There's an email from Kim
17 Tulsky. Do you know who that is?

18 **A.** Yes, I do remember Kim.

19 **Q.** Who is Kim Tulsky?

20 **A.** I don't remember her exact role at the time, but she was
21 an employee of United Behavioral Health.

22 **Q.** And in her email do you see the second paragraph it says:

23 "Per Wendy Morse, there are two states (IL and WA)
24 that specifically require that we are using the ASAM
25 patient placement criteria for our commercial business

1 when making our medical necessity determinations."

2 Did I read that correctly?

3 **A.** Yes, you did.

4 **Q.** Okay. Now, let's turn to page 11. And there's an email
5 from you; right?

6 **A.** Yes, that's correct.

7 **Q.** On July 9th, 2012; right?

8 **A.** July 9th, 2012, correct.

9 **Q.** And you say:

10 "Wendy, I would like additional clarification."

11 Right?

12 **A.** That's correct.

13 **Q.** And then at the top of page 12 is your specific question.
14 Are you there?

15 **A.** Yes.

16 **Q.** You asked:

17 "Are there regulatory requirements in each of these
18 states and do they specify that we use the ASAM Criteria
19 or criteria that is consistent with ASAM?"

20 And underline "that is consistent."

21 Did I read that correctly?

22 **A.** That is correct.

23 **Q.** And then back on page 11, Ms. Morse responds to you:

24 "Hi, Jerry. These states require using ASAM
25 criteria."

1 Did I read that correctly?

2 A. Yes, you did.

3 Q. And Wendy Morse was in the compliance department?

4 A. That is correct, yes.

5 Q. All right. Let's jump to page 6. There's another email
6 from Wendy Morse. Do you see it?

7 A. I do, yes.

8 Q. And in her email she provides supporting insurance law
9 citations for the commercial requirements.

10 Do you see that?

11 A. I do, yes.

12 Q. Including for Illinois?

13 A. That is correct, yes.

14 Q. Now let's go to page 2.

15 A. I'm there.

16 Q. Okay. And do you see the email from Jerry Hodess?

17 A. I do.

18 Q. Okay. What was his position?

19 A. You know, what? I'm not entirely sure.

20 Q. So Mr. Hoe des writes:

21 "Marie, LaRhonda Jones, regional medical director in
22 Saint Louis, just approached me with a question about this
23 particular issue.

24 "We have continued to operate here in Saint Louis as
25 though we do not need to cite ASAM in our coverage

1 determinations for treatments of SUDs on commercial
2 members in Illinois. Based on previous advice, we were
3 operating as though our LOCs/CDGs are generally," quote,
4 "'in accordance,'" closed quote, "with ASAM criteria."

5 Did I read that correctly?

6 **A.** Yes, you did.

7 **Q.** And then that last email in the string is your response to
8 Mr. Hodess; right?

9 **A.** Yes.

10 **Q.** And you state:

11 "Jeremy, you're correct, operating as though our
12 guidelines are in accordance with ASAM's criteria."

13 Did I read that correctly?

14 **A.** That is correct.

15 **Q.** Could you turn to Exhibit 651, please. Are you there?

16 **A.** I'm there.

17 **Q.** Exhibit 651 is an email from -- is it Von Grubbs?

18 **A.** Von Grubbs, correct.

19 **Q.** To you, among others?

20 **A.** Among others, yes.

21 **Q.** And it's dated June 20, 2014?

22 **A.** Yes, that's correct.

23 **MS. REYNOLDS:** We offer Exhibit 651 into evidence.

24 **THE COURT:** 651. Any objection?

25 **MS. ROMANO:** No objection.

1 **THE COURT:** It's admitted.

2 (Trial Exhibit 651 received in evidence.)

3 **BY MS. REYNOLDS:**

4 **Q.** And this email, the subject matter is "ASAM Level of Care
5 Guidelines"; is that right?

6 **A.** That is correct, yes.

7 **Q.** And what's being discussed in this email string is moving
8 to the ASAM Criteria for Rhode Island with respect to Medicaid
9 only; right?

10 **A.** That is correct, yes.

11 **Q.** UBH has never adopted ASAM Criteria in Rhode Island for
12 commercial plans; right?

13 **A.** That is correct, yes.

14 **Q.** Okay. Let's just look at the -- the final email in this
15 string here, from Von Grubbs to you and others.

16 Is that Mr. Grubbs or Ms. Grubbs?

17 **A.** Mr. Grubbs.

18 **Q.** Okay, Mr. Grubbs. Mr. Grubbs states:

19 "What I want to understand is if/how this change
20 would impact residential costs for other Rhode Island
21 members who have a residential benefit. Historically, we
22 haven't covered the lower levels of residential. However,
23 if we move to using ASAM, I don't see how we are able to
24 deny the lower levels if the member has a residential
25 benefit."

1 Did I read that correctly?

2 A. Yes, you did.

3 Q. Can you turn to Exhibit 360.

4 A. I'm there.

5 Q. Okay. Exhibit 360 is an email string, where the last
6 email is to you from Michael Haberman; right?

7 A. That is correct, yes.

8 Q. Dated January 4th, 2013?

9 A. That is correct.

10 THE COURT: Your Honor, we move Exhibit 360 into
11 evidence.

12 MS. ROMANO: No objection.

13 THE COURT: Admitted.

14 (Trial Exhibit 360 received in evidence.)

15 BY MS. REYNOLDS:

16 Q. Let's turn to the first email in that string, which starts
17 on page 3 of Exhibit 360. Are you there?

18 A. I'm there.

19 Q. And this is an email from Lawrence Baker to Michael
20 Haberman?

21 Dr. Baker is a medical director at UBH?

22 A. Yes, yes, he is.

23 Q. And Michael Haberman is also a medical director at UBH?

24 A. That is correct.

25 Q. So Dr. Baker is posing a question to Dr. Haberman in this

1 email; right?

2 **A.** That is correct, yes.

3 **Q.** Okay. So in the second paragraph of the email it says:

4 "The following statement from the LOC guidelines has
5 always" -- I think he means "been" -- "has always been
6 troubling to me, especially the sentence I have bolded
7 below. It has reached more relevancy as a father of one
8 of our members quoted the bolded sentence while talking
9 about his son's case to one of our care advocates. His
10 son's case is similar to many others, where you have a
11 child who is clearly dangerous and unresponsive to
12 treatment. We can further easily assume that the member
13 would deteriorate or relapse if treatment at the current
14 level were discontinued. So the question is, how can you
15 legitimately ABD such a case by calling it custodial,
16 which is what the father was saying? My answer, which is
17 implied in the paragraph, is that we always assume that
18 services will improve the person's ability to function in
19 the community and that there must be a reasonable
20 expectation that this can occur within a reasonable period
21 of time. The person's inability to improve within a
22 reasonable period of time trumps the issue of whether they
23 would deteriorate if discharged."

24 Did I read that correctly?

25 **A.** Yes, you did.

1 Q. And ABD means adverse benefit determination?

2 A. That is correct.

3 Q. That's referring to whether or not -- that's referring to
4 the issuance of a denial; right?

5 A. Denial of coverage, yes.

6 Q. Okay. And then on the next page is the paragraph that he
7 was referring to, which states:

8 "Care should be effective: There must be a
9 reasonable expectation that evidence-based treatment
10 delivered in the appropriate level of care will improve
11 the member's presenting problems within a reasonable
12 period of time."

13 And then bolded:

14 "Improvement in this context is measured by weighing
15 the effectiveness of treatment and the risk that the
16 member's condition is likely to deteriorate or relapse if
17 treatment in the current level of care were to be
18 discontinued."

19 And then the last sentence is not bolded.

20 "Improvement must also be understood within a
21 recovery framework where services support movement toward
22 a full life in the community."

23 Did I read that correctly?

24 A. Yes, you did.

25 Q. And then let's turn to page 2. Are you there?

1 **A.** I'm there.

2 **Q.** Okay. So Dr. Haberman forwards the question from
3 Dr. Baker to Dr. Triana; right?

4 **A.** That is correct, yes.

5 **Q.** Okay. And Dr. Triana says in his own email on page 2:

6 "I would forward this to Jerry Niewenhous. He is
7 leading to efforts in editing the LOCs. If I am reading
8 Larry's email correctly, he is advocating being clearer in
9 the guideline by adding a statement that addresses 'within
10 a reasonable period of time.'"

11 Did I read that correctly?

12 **A.** Yes, you did.

13 **Q.** UBH did not make any changes to the Level of Care
14 Guidelines in response to this question; right?

15 **A.** I would have to see the -- that version of the guideline
16 to verify that.

17 **Q.** Has UBH ever added a clarification about what is meant by
18 "reasonable period of time"?

19 **A.** Not that I recall, no.

20 **Q.** Could you turn to Exhibit 539.

21 Are you there?

22 **A.** I'm there.

23 **Q.** This is an email exchange between you and Lynn Wetherbee;
24 right?

25 **MS. ROMANO:** Your Honor, this one is subject to the

1 joint sealing motion, 539.

2 MS. REYNOLDS: Oh, I'm sorry.

3 THE COURT: So can we do this at the end.

4 MS. REYNOLDS: I'll do it last.

5 THE COURT: So we can seal the courtroom.

6 MS. REYNOLDS: Okay. Could you please turn to Exhibit
7 552.

8 THE WITNESS: I'm there.

9 BY MS. REYNOLDS:

10 Q. Okay. These are the minutes of the August 9, 2016
11 Utilization Management Committee meeting; right?

12 A. That is correct.

13 Q. And you were present at that meeting?

14 A. That is correct; as a nonvoting member.

15 Q. And Dr. Triana was present at that meeting; right?

16 A. That is correct.

17 Q. Okay. Okay. Could you turn to page 8 of Exhibit 552.

18 A. I'm there.

19 Q. Okay. So the first row relates to the discussion about
20 the Quick Cert program. Is that right?

21 A. I'm sorry, we're on page? 8, yes. Yes, that's what I'm
22 reading here.

23 Q. The discussion starts, actually, I think, on page 6; but
24 I'm going to focus you on the part on page 8.

25 A. Yes.

1 Q. Okay. So this is a discussion about Quick Cert and
2 treatment milestones; right?

3 A. That's what I'm reading here, yes.

4 Q. Okay. So on page 8 the minutes state:

5 "Finally, baseline data is being compiled as
6 claims-based data becomes available. These reports
7 include a monthly breakout of the average length of stay
8 (ALOS) by diagnostic category and level of care, and
9 enable a month-by-month comparison of baseline run rates
10 to pilot actuals. The report includes the ALOS mean,
11 median, standard deviation and the percent of readmits
12 within 30 days by the three age categories."

13 Did I read that correctly?

14 A. Yes, you did.

15 Q. And then if you skip down to the last -- second to last
16 paragraph in that portion of the guidelines, it states: "For
17 the purposes of this committee."

18 Do you see that?

19 A. I do.

20 Q. So the minutes say:

21 "For the purposes of this committee, Dr. Triana
22 requested that the UM Committee be updated going forward
23 on significant data trends or if the ACE Committee would
24 like to obtain the commit members input on a particular
25 topic."

1 Did I read that correctly?

2 A. Yes, you did.

3 Q. Could you turn to Exhibit 556.

4 A. I'm there.

5 Q. Okay. These are minutes of the October 11, 2016
6 Utilization Management Committee meeting; right?

7 A. That is correct.

8 Q. And you were present at that meeting?

9 A. Yes. Again, as a nonvoting member.

10 Q. And Dr. Triana was present at that meeting; right?

11 A. That is correct.

12 Q. Let's turn to page 6. There's another discussion of the
13 Quick Cert and treatment milestones update. Do you see that?

14 A. I do.

15 Q. Okay. And in that section of the minutes it states:

16 "There are three potential concerns with QC and the
17 impact to BenEx: Increase in volume, increase in average
18 length of stay (ALOS), increase in step down rates."

19 And then there's some additional discussion under that;
20 right?

21 A. That is correct, yes.

22 Q. And then beneath the bullet points it says:

23 "Together, these have an estimated monetized impact
24 of risk business of 1.6 million for the month (versus
25 baseline ALOS levels)."

1 Did I read that correctly?

2 **A.** Yes, you did.

3 **Q.** Okay.

4 **MS. REYNOLDS:** Your Honor, I move exhibits 552 and 556
5 into evidence.

6 **THE COURT:** 552 and 556.

7 **MS. ROMANO:** No objection.

8 **THE COURT:** Admitted.

9 (Trial Exhibits 552 and 556 received in evidence.)

10 **MS. REYNOLDS:** Okay. Your Honor, the only thing I
11 have left is the sealed exhibit.

12 **THE COURT:** Okay. We're going to go into a brief
13 sealed session. So I'll ask anyone who is not counsel for a
14 party or a party to please go outside. And that does mean
15 class members who are not named plaintiffs. It will only take
16 a couple of minutes.

17 **MS. ROMANO:** Can I ask one question? It looks like
18 this document is a PHI one. It might have been redacted. So
19 before we clear the courtroom, we wanted to clarify that.

20 **MS. REYNOLDS:** Do we have the right exhibit?

21 **MS. ROMANO:** Maybe we're confused by. It just seemed
22 like maybe we should sort it out before --

23 **THE COURT:** Go ahead. Sort away. What exhibit number
24 are we talking about?

25 **MS. REYNOLDS:** Oh, maybe there's additional.

1 (Counsel confer off the record.)

2 **THE COURT:** We don't have to clear the courtroom?

3 **MS. REYNOLDS:** We don't. There's a redaction for PHI,
4 but we're not going to be talking about it at all.

5 **THE COURT:** Invite everybody back in.

6 **MS. REYNOLDS:** I'm sorry, Your Honor, I didn't realize
7 that was the issue.

8 **BY MS. REYNOLDS:**

9 **Q.** Could you turn to Exhibit 539, please.

10 **A.** Okay. I'm there.

11 **Q.** Okay. So Exhibit 539 is an email exchange between you and
12 Lynn Wetherbee; right?

13 **A.** That is correct.

14 **Q.** Dated April 5th, 2016?

15 **A.** That's correct.

16 **MS. REYNOLDS:** Your Honor, we move Exhibit 539 into
17 evidence.

18 **MS. ROMANO:** No objection.

19 **THE COURT:** It's admitted.

20 (Trial Exhibit 539 received in evidence.)

21 **BY MS. REYNOLDS:**

22 **Q.** And let's -- let's start on page 2. There's an email from
23 you to Ms. Wetherbee. Ms. Wetherbee was your boss at this
24 time; right?

25 **A.** That is correct, yes.

1 Q. And so you state:

2 "Here you go, Lynn. Let me know if this works."

3 And then you're summarizing some information about the
4 Level of Care Guidelines; right?

5 A. Yes.

6 Q. Okay. Do you see the heading "Changes in 2015"?

7 A. I do.

8 Q. Okay. And then it goes over to page 3, the first bullet
9 on the top of page 3. Do you see that?

10 A. I do.

11 Q. It says:

12 "Removed the admission criteria 'co-occurring
13 behavioral health or medical surgical conditions can be
14 safely managed.' This criteria became a criteria for all
15 levels of care."

16 Did I read that correctly?

17 A. Yes, you did.

18 Q. And so this was referring to the fact that in 2015, the
19 admission criterion moved from the residential treatment
20 section to the common criteria; right?

21 A. That is correct.

22 Q. Okay. And then Ms. Wetherbee's response appears at the
23 top of page 2; right?

24 A. Yes.

25 Q. Okay. She says:

1 "Thank you. Please see the highlighted section
2 below. Looks like a word or two are missing. Please
3 include me in your response."

4 Did I read that correctly?

5 **A.** Yes, you did.

6 **Q.** And the highlighted section in your email says:

7 "Surgical conditions can be safely managed."

8 Right?

9 **A.** Yes.

10 **Q.** And then your response to her on page 1. Are you there?

11 **A.** I'm there.

12 **Q.** You say:

13 "No words missing. That's how the criteria was
14 written. Intended to convey that someone could be treated
15 in residential if co-occurring conditions could be safely
16 managed."

17 Did I read that correctly?

18 **A.** Yes, you did.

19 **MS. REYNOLDS:** Your Honor, we have no further
20 questions. And plaintiffs rest.

21 **MS. ROMANO:** Redirect, Your Honor.

22 **THE COURT:** Cross-examination.

23 **CROSS-EXAMINATION**

24 **BY MS. ROMANO:**

25 **Q.** Good morning, Mr. Niewenhous.

1 **A.** Good morning.

2 **Q.** Just a few questions.

3 In your testimony just a few moments ago, Ms. Reynolds
4 showed you a couple of minutes from Utilization Management
5 Committee meetings.

6 Do you recall that?

7 **A.** I do.

8 **Q.** And is the Utilization Management Committee something
9 different from BPAC?

10 **A.** It is a different committee from BPAC, but it shares the
11 responsibility for -- that BPAC had for approving guidelines.

12 **Q.** Does the Utilization Management Committee cover more
13 things than just discussing and approving Level of Care
14 Guidelines and Coverage Determination Guidelines?

15 **A.** That is my recollection, yes.

16 **Q.** And there were some references to something called Quick
17 Cert.

18 **A.** I recall that.

19 **Q.** And are you familiar with what Quick Cert is?

20 **A.** Oh, at the 50,000-foot level.

21 **Q.** And does Quick Cert relate, in any way, to the content of
22 the Level of Care Guidelines?

23 **A.** No, it does not.

24 **Q.** Does the Quick Cert relate, in any way, to the content of
25 the Coverage Determination Guidelines?

PROCEEDINGS

1 **A.** No, it does not.

2 **MS. ROMANO:** Okay. I have no further questions.

3 **MS. REYNOLDS:** No further questions. And now
4 plaintiffs rest.

5 **THE COURT:** Thank you, sir.

6 **THE WITNESS:** Thank you.

7 (Witness steps down.)

8 **THE COURT:** Okay. Tomorrow -- closings are next. Is
9 that all that's left here?

10 **MS. REYNOLDS:** Yes.

11 **THE COURT:** We'll start at 10:30.

12 How long do you want for your closings?

13 **MR. GOELMAN:** Best estimate, Your Honor, somewhere
14 between 60 and 75 minutes for plaintiffs'.

15 **MS. ROMANO:** Our estimate was around an hour, Your
16 Honor.

17 **THE COURT:** Okay. Great. So we'll see how it goes.

18 We'll try to get it all done before a lunch break, if we
19 can. And we'll break between the arguments, not in the middle
20 of somebody's argument. Even if it means a little awkward
21 timing.

22 Okay. See you tomorrow morning.

23 **MS. ROMANO:** One more thing, Your Honor. UBH does
24 renew its motion for judgment on partial findings under Rule
25 52(c) .

PROCEEDINGS

1 **THE COURT:** Okay.

2 **MS. ROMANO:** And, in addition, UBH does intend to
3 bring a motion for a decertification.

4 We have been working with plaintiffs' counsel about
5 briefing schedule on post-trial briefs, and we will be working
6 with them on that as well.

7 **THE COURT:** Okay. I would like to finalize that
8 briefing schedule tomorrow, okay. Great.

9 **MS. ROMANO:** Okay. Thank you.

10 **THE COURT:** Thank you.

11 **THE CLERK:** The Court stands in recess.

12 (Proceedings to resume on Wednesday, November 1, 2017.)

13 - - - -

14 CERTIFICATE OF REPORTERS

15 We certify that the foregoing is a correct transcript
16 from the record of proceedings in the above-entitled matter.

17 DATE: Tuesday, October 31, 2017

18
19 *Katherine Sullivan*

20 _____
21 Katherine Powell Sullivan, CSR #5812, RMR, CRR
22 U.S. Court Reporter

23 *Jo Ann Bryce*

24 _____
25 Jo Ann Bryce, CSR #3321, RMR, CRR
 U.S. Court Reporter